



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

September 27, 1996

Ms. Tamara Armstrong
Assistant County Attorney
Travis County
P.O. Box 1748
Austin, Texas 78767

OR96-1770

Dear Ms. Armstrong:

You ask whether certain information is subject to required public disclosure under the Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 100385.

The Office of the Travis County District Attorney (the "county") received a request for "any information pertaining to [Cause No. 95-2451]." The requestor also seeks certain blood test results. You assert that the requested information is excepted from required public disclosure based on sections 552.101 and 552.111 of the Government Code. You also assert that portions of the requested information are not subject to the Open Records Act (the "act") under Government Code section 552.003(a)(B).

You say you have withheld from the requestor grand jury records. The act does not apply to records of the judiciary. Gov't Code § 552.003(a)(B). Records in a district attorney's possession that a grand jury has subpoenaed are within the grand jury's constructive possession and are not subject to the act. *See* Open Records decision No. 513 (1988). Furthermore, you must withhold from the public information not within the grand jury's constructive possession if releasing the information would reveal the grand jury's deliberations. *See* Gov't Code § 552.101, Code Crim. Proc. arts. 20.01, 20.02.

Section 552.111 of the Government Code excepts from disclosure "an interagency or intra-agency memorandum or letter that would not be available by law to a party in litigation with the agency." This office has recently concluded that section 552.111 applies to an attorney's work product created in anticipation of civil litigation. *See* Open Records Decision No. 647 (1996). The work product privilege is also applicable to litigation files in criminal litigation. *See Curry v. Walker*, 873 S.W.2d 379 (Tex. 1994). When a requestor

asks for an attorney's work file regarding particular litigation, this office has stated that a request may be denied in its entirety because "the organization of an attorney's litigation file necessarily reflects the attorney's thought processes concerning the litigation and is the very core of the work product privilege." *See id.* at 5. Moreover, the primary purpose of the work product doctrine is to "shelter the mental processes, conclusions and legal theories of the attorney," and "does not extend to the facts acquired." *See id.* at 4 (citing *National Tank*, 851 S.W.2d 193 at 202-203 n.11.)

The requestor here has asked for an attorney's entire file, but has additionally asked for certain blood test results. We believe the county may withhold from the requestor pursuant to section 552.111 as attorney work product all of the information in the file, with the exception of the requested blood test results. We believe the blood test results are "facts acquired" in the case, rather than the attorney's "mental processes, conclusions or legal theories." You raise no other exception to the public disclosure of the blood test results. Accordingly, the county must release the test results to the requestor.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Kay Guajardo
Assistant Attorney General
Open Records Division

KHG/rho

Ref.: ID# 100385

Enclosures: Submitted documents

cc: Mr. Daniel R. Richards
Bernsen, Jamail & Goodson, L.L.P.
823 Congress, Suite 706
Austin, Texas 78701
(w/o enclosures)